

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the matter of: )  
)  
) U.S. EPA Docket No.  
Atlantic Richfield Company ) RCRA 7003 98-09-01  
)  
)  
Respondent ) ADMINISTRATIVE ORDER  
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I. JURISDICTION AND PROCEDURE

1. This Administrative Order is issued to Atlantic Richfield Company ("ARCO"), ("Respondent"), by the United States Environmental Protection Agency ("EPA") pursuant to the authority vested in the Administrator of EPA by Section 7003 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 et seq. (the "Act"), which authority has been duly designated to the Regional Administrator of EPA, Region IX and redelegated to the Director of the Waste Management Division (Director). Notice of this Order has been provided to the State of California, Department of Toxic Substances Control ("DTSC"), as may be required by Section 7003(a) of the Act, 42 U.S.C. §7003(a) of the Act, 42 U.S.C. §6973(a).

II. PARTIES BOUND

1. This Order shall apply to and be binding upon the Respondent identified in paragraph I.1. and its directors, officers, employees, agents, successors and assigns and upon all other persons and entities who are under the direct or indirect control of Respondent (including, but not limited to, any contractors or independent agents or consultants acting under or for Respondent)

until such time as the Work to be performed under Section VI. has been completed. At such time as those matters referred to above and all actions required under this Order are concluded, this Order shall terminate.

2. No change in the ownership or corporate, partnership or legal status of Respondent or of the Site will in any way alter Respondent's obligations and responsibilities under this Order.

3. Respondent shall provide a copy of this Order and all other documents approved under or pursuant to this Order which are necessary to conduct the Work to each contractor, sub-contractor, laboratory, or consultant retained to perform any Work under this Order, within five (5) days after the Effective Date of this Order or on the date such services are retained, whichever date occurs later. Respondent shall also provide a copy of this Order to each person representing the Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order and for ensuring that its contractors, subcontractors and agents comply with this Order, and perform all Work in accordance with this Order.

4. At all times after service of this Order, Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights or stock are transferred to the prospective owner or successor. The Respondent shall notify EPA within seven (7) days prior to such transfer.

5. Respondent Atlantic Richfield Company, (ARCO) is a Delaware Corporation, authorized to do business in California, whose mailing address is 515 Flower Street #4519 Los Angeles, California 90071. ARCO is a "person" as that term is defined in Section 104(15) of the Act, 42 U.S.C. §6903(15).

### III. FINDINGS OF FACT

1. The PRC Patterson Vernalis site (the "Site") is comprised of one large storage tank located at 1141 Highway 33 in Vernalis, California (the "Vernalis Storage Tank" or "Storage Tank V1").

2. Facility operations were commenced in 1986 by Recycletron Oil Inc., ("RCI"), a California corporation doing business as Refineries Services. In 1989, Recycletron Oil Inc., merged with Petroleum Recycling Corporation, a California corporation. Shortly thereafter, PRC Patterson ("PRC") was formed and PRC operated the site continuously from 1989 until sometime between 1996 and 1997 when the site was abandoned.

3. a) On October 31, 1997 EPA received a verbal request from DTSC for assistance at the Site. DTSC staff informed EPA that large quantities of waste oil, and sludge were stored at the site in an aging and dilapidated tank. DTSC further indicated that removal and disposal of the waste was necessary but they did not have funds available to accomplish this task. EPA, in conjunction with DTSC, conducted a preliminary inspection of the facility on that date. The Site had been abandoned and general site conditions had begun to deteriorate. The V. tank, which contains a large quantity of oily liquid, appeared to be unstable due to its contents, age and deteriorating condition.

b) On November 18, 1997, EPA received a written request from DTSC for assistance in securing the facility and removing and disposing of the wastes on site.

4. From December 1 through December 6, 1997, EPA conducted an assessment of the Site. Results of sampling and analyses conducted during this assessment are presented in the March 1998 report entitled "Enviro-pur/PRC Patterson Oil Recycling Facility Removal Assessment" prepared by Ecology and Environment (Appendix A).

5. There is a large storage tank (the "Vernalis Storage Tank" or "Storage Tank V.") located at the site which contains sludge, and oil. The table below provides an estimate of the volumes of sludge and oil present in this tank.

Tank #	Radius(ft)	Height(ft)	Capacity(gal)	Oil(ft)	Oil(gal)	Water(ft)	Water(gal)	Sludge(ft)	Sludge(gal)
V.	57.5	29	2253124	13	1010021	0	0	1	77694

1 cubic foot = 7.48 liquid gallons

6. Between 1987 and 1988, oily waste from ARCO's Watson Refinery was shipped to Brent Petroleum in Long Beach, then to California Western Fuels in Bakersfield and finally to PRC's main facility in Patterson, CA where it was stored a tank designated as S1. Documents, including but not limited to correspondence, invoices, bills of lading, and contracts demonstrate that the oily waste from ARCO eventually came to be located in the S1 Storage Tank at the PRC Patterson facility in 1988.

7. On or about June 5, 1989 the S1 Storage Tank at PRC's Patterson facility failed, resulting in the release of in excess of one million gallons of oily waste. The spilled material, the remaining contents of the tank and the resulting contaminated soil were removed and transported by PRC to the V. Storage Tank at the site in Vernalis.

#### IV. CONCLUSIONS OF LAW AND DETERMINATION

Based on the Findings of Fact set forth above, EPA has concluded and determined that:

1. ARCO is a "person" as defined in Section 1004(15) of the Act, 42 U.S.C. §6903(15) whose past or present handling, storage, treatment, transportation or disposal of "solid wastes" as defined by Section 1004(27) of RCRA, 42 U.S.C. §6903(27) may present an imminent and substantial endangerment to health or the environment under Section 7003 of RCRA, 42 U.S.C. §6973.

2. The contents of the V. tank at the site are "solid wastes" as defined by Section 1004(27) of RCRA, 42 U.S.C. §6903(27), which may present an imminent and substantial endangerment to health or the environment under Section 7003 of RCRA, 42 U.S.C. §6973.

3. ARCO is liable under Section 7003 of RCRA, 42 U.S.C. §6973 because it has contributed and is contributing to the handling, storage, treatment, transportation or disposal of solid waste at the Site.

4. ARCO is liable under Section 7003 of RCRA, 42 U.S.C. §6973 to take all necessary corrective action with respect to the waste

oil, wastewater and sludge present in Storage Tank V., in order to abate such imminent and substantial endangerment.

5. Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, on the administrative record, and upon evidence and information that the past or present handling, storage, treatment, transportation or disposal of solid waste by ARCO at the Site may present an imminent and substantial endangerment to health or the environment, the Director has determined that issuance of this Order is necessary to protect public health and the environment.

#### ORDER

Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, the administrative record, and the foregoing determination, it is hereby ORDERED that:

1. Respondent shall fully cooperate with EPA and its authorized representatives in carrying out the provisions of this Order, including the taking of all actions set forth below within the time periods and in the manner prescribed, as required by this Order;

2. Effective immediately upon receipt of this Order, Respondent shall take no action in connection with contamination at the Site other than those actions specified by EPA in accordance with the Work to be Performed provisions of this Order.

#### V. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Order which are defined in 42 U.S.C. §§6903 and 40 C.F.R. §260.10, shall have the meaning assigned to them in the statute or implementing regulations.

2. "Site" shall mean the large storage tank herein identified as V., at the facility located at 1141 Highway 33 in Vernalis, California.

3. "Work" shall mean those requirements set forth in Section VI herein (Work to be Performed).

VI. WORK TO BE PERFORMED

1. Respondent is ordered to perform the Work and make submittals and certifications as set forth below within the time schedules specified. All days specified below are consecutive calendar days from the Effective Date of this Order. Due dates falling on a Saturday, Sunday, or federal holiday will be automatically extended to the next business day.

2. The Respondent shall submit a monthly progress report ("Progress Report") by the fifteenth (15th) day following the end of the first full calendar month after the Effective Date of this Order, and by the fifteenth (15th) day of every month thereafter, as provided in Section VII.

3. Within twenty-one (21) days after the Effective Date of the Order, Respondent shall submit a Tank Removal Work Plan which, at a minimum, includes the following:

A. A plan for removal of the contents of Storage Tank V.. including:

- i) a detailed description of the sampling and analytical methods to be used to characterize the oil, waste-water and sludge waste for disposal purposes;
- ii) a detailed description of the methods for removing oil, waste-water and sludge waste from the tank;
- iii) a detailed description of any treatment that will be performed on the waste;
- iv) identification of any treatment, storage, disposal or recycling facility that will receive the waste;
- v) identification of the methods of transport used to haul any waste offsite;
- vi) identification of any transporters used to haul any waste offsite;
- vii) a detailed description of air monitoring to be performed during onsite activities;

viii) a detailed description of actions to be taken to minimize air emissions;

- B. A plan for the decontamination and/or demolition of Tank V..
- C. A Sampling Plan to be used in the event that samples are collected for assessment, waste profiling, tank decontamination or air monitoring activities.
- D. A Health and Safety Plan.
- E. A Contingency Plan which describes actions to be taken in the event of a spill or accident.
- F. A schedule for completion of all activities described in the Tank Removal Work Plan.

4. Within seven (7) days after EPA approval of the Tank Removal Work Plan, Respondent shall initiate activities described in that plan. The Tank Removal Work Plan should require the completion of all activities within ninety (90) days of EPA approval of the Work Plan.

5. All contractors, transporters and treatment, storage, disposal or recycling facilities used or proposed for use during this action are subject to EPA approval. Respondent must demonstrate to EPA's satisfaction that the waste is or is not a Listed or Characteristic Hazardous Waste as defined in 40 C.F.R. Part 261. All subsequent handling, transport and disposal shall be conducted in accordance with this waste classification.

6. Any noncompliance with the Work to be performed or the schedules set forth within this section shall be considered a violation of this Order.

#### VII. NOTICES AND SUBMISSIONS

1. Whenever, under the terms of this Order, written notice is required to be given or a report or other document is required to be submitted to EPA, it shall be directed to the individuals at the addresses specified below, unless those individuals or their

successors give notice of a change to the Respondent in writing. All notices and submissions shall be sent by certified mail, return receipt requested or overnight mail and shall be effective upon receipt, unless otherwise provided herein.

Tom Dunkelman  
Emergency Response Office (SFD-6)  
U.S. Environmental Protection Agency  
75 Hawthorne St.  
San Francisco, CA 94105

with a copy to the Alternate Project Coordinator, John Jaros, at the same address.

2. Respondent shall make each of the submittals, including Progress Reports, required under Section VI (Work to Be Performed), within the time periods specified therein to EPA as provided for above and by regular mail to:

Jim Simpson  
Stanislaus County Department of Environmental Resources  
1716 Morgan Rd.  
Modesto, CA 95358

Mehdi Nobari  
California Department of Toxics Substances Control  
1011 North Grandview Ave.  
Glendale, CA 91201

#### VIII. APPROVALS/DISAPPROVALS

1. After review of any deliverable, plan, report, or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by



EPA," "EPA approval" or a similar term means the actions described in clauses (a) or (b) of this paragraph.

2. In the event of approval or approval with modifications by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

3. Upon receipt of a notice of disapproval or a request for a modification, Respondent shall, within seven (7) days or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

4. In the event that a re-submitted plan, report or other item, or portion thereof is disapproved by EPA, EPA may again require Respondent to correct the deficiencies in accordance with the preceding paragraphs. EPA also retains the right to develop the plan, report or other item. Respondent shall implement any such plan, report or item as amended or developed by EPA.

5. If any submission is not approved by EPA after re-submission in accordance with the immediately preceding paragraph, Respondent shall be deemed in violation of the provision of this Order requiring Respondent to submit such plan, report or item.

6. Any deliverables, plans, reports or other item required by this Order to be submitted for EPA review and approval are, upon approval of EPA, incorporated into this Order and enforceable hereunder.

#### IX. ACCESS TO SITE NOT OWNED BY RESPONDENT

1. To the extent the Site, any off-Site area that is to be used for access, any property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by the clean-up, is owned or leased in whole or in part by parties other than those bound by this Order, Respondent will use its best efforts to obtain site access agreements from the present owner(s) and/or lessees. Such efforts must be made within thirty (30) days of the Effective

Date of this Order, if the need for site access is known as of the Effective Date of the Order, or, if not known as of the Effective Date of this Order, within thirty (30) days of EPA approval of any work plan, report or document pursuant to this Order which requires Work on such property. "Best efforts" as used in this paragraph shall include, at a minimum, but shall not be limited to: (a) a certified letter from Respondent to the present owner(s) and/or lessee(s) of the property requesting access agreements to permit Respondent, EPA and their authorized representatives access to such property, and (b) the payment of reasonable compensation in consideration for such access.

"Reasonable sums of money" means the fair market value of the right of access necessary to implement the requirements of this Order.

2. All site access agreements entered into pursuant to paragraph 1 of this Section shall provide access for EPA, its contractors and oversight officials, the state and its contractors and Respondents and Respondents' authorized representatives and contractors. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Respondent shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities.

3. If access agreements are not obtained within the time set forth above, Respondent shall immediately notify EPA, in writing, of the failure to obtain access, specifying the efforts undertaken to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access as necessary for implementation of response actions taken pursuant to this Order. EPA may also perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain

access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property, and shall reimburse EPA to the full extent allowed by law for all response costs incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

X. ACCESS TO SITE AND DATA/DOCUMENT AVAILABILITY

1. Respondent shall allow EPA and its authorized representatives and contractors to enter and freely move about the Site at all reasonable times for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its representatives or contractors pursuant to this Order; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors deem necessary; using a camera, sound recording device or other documentary type equipment; verifying the data submitted to EPA by Respondent and copying all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under Federal law.

2. Respondent may assert a business confidentiality claim covering all or part of the information submitted to EPA pursuant to the terms of this Order in the manner prescribed by 40 C.F.R. §2.203(b) to the extent such claim is not inconsistent with any other provisions of law. Any assertion of confidentiality shall be adequately substantiated by the Respondent making the claim when the assertion is made, in accordance with 40 C.F.R. §2.204(e). Information subject to a confidentiality claim shall be disclosed only to the extent and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent making the claim. Respondent shall not assert any business confidentiality claim with regard to Site conditions or any physical, sampling, monitoring or analytical data.

3. Respondent shall maintain for the period during which this Order is in effect an index of documents that Respondent claims contains confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondent shall submit a copy of the index to EPA.

## XII. ENDANGERMENT AND EMERGENCY RESPONSE

1. In the event Respondent identifies a current or immediate threat to human health and the environment, Respondent shall immediately notify the EPA Project Coordinator (or his alternate if not available) by telephone. If neither of these persons are available, Respondent shall immediately notify the EPA Region IX Emergency Response Section by calling (415) 744-2000. In addition to the telephonic notice, written notification shall be made to EPA within twenty-four (24) hours of first obtaining knowledge of the threat, summarizing the immediacy and magnitude of the current or immediate threat to human health and the environment. Respondent shall take immediate action to prevent, abate, or minimize the threat in consultation with EPA's Project Coordinator and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan. Respondent shall thereafter submit the plan for EPA approval, as soon as possible but no later than five (5) days after identification of the threat, a plan to mitigate the threat. EPA will approve or modify the plan, and Respondent as the case may be, shall implement the plan as approved or modified by EPA. In the event that Respondent fails to take appropriate response action as required by this Section, and EPA takes that action instead, Respondent shall reimburse EPA for all costs of the response action to the full extent allowed by law.

2. If EPA determines that any action or occurrence during the performance of the Work causes or threatens to cause a release or disposal of hazardous substances, pollutants or contaminants, regulated substances or hazardous or solid wastes which may present an imminent and substantial endangerment to the public health or welfare or the environment, EPA may direct Respondent to undertake any action EPA determines is necessary to abate such disposal or release or threatened release and/or direct Respondent to cease activities Respondent is then undertaking

pursuant to this Order for such time as may be needed to abate any such disposal or release or threatened release.

3. Nothing in this Section shall be deemed to limit any authority of the United States to take, direct or order all appropriate action to protect human health and the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, regulated substances or hazardous or solid wastes at or from the Site.

#### XIII. RECORD PRESERVATION

1. Respondent shall provide to EPA upon request copies of all documents and information within its possession and/or control or that of its contractors, employees or agents relating to activities at the Site or to the implementation of this Order, including but not limited to sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

2. Until five (5) years after termination of this Order, Respondent shall preserve and retain all records and documents in its possession or control, including the documents in the possession or control of its contractors, employees or agents on and after the Effective Date of this Order that relate in any manner to the Site, including but not limited to records, documents or other information relating to its potential liability with regard to the Site. At the conclusion of this document retention period, Respondent shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by the United States, shall deliver any such records or documents to EPA.

3. Until five (5) years after termination of this Order, Respondent shall preserve, and shall instruct its contractors and agents to preserve, all documents, records, and information of whatever kind, nature or description relating to the performance

of the Work. Upon the conclusion of this document retention period, Respondent shall notify the United States at least ninety (90) days prior to the destruction of any such records, documents or information, and, upon request of the United States, shall deliver all such documents, records and information to EPA.

#### XIV. PROJECT COORDINATORS

1. Within three (3) days after the Effective Date of this Order, Respondent shall designate a Project Coordinator for the Work for which it is responsible and shall submit the name, address, and telephone number of the Project Coordinator to EPA for review and approval. Respondent's Project Coordinator shall be responsible for overseeing Respondent's implementation of this Order. If Respondent wishes to change its Project Coordinator, Respondent shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator.

2. EPA hereby designates Tom Dunkelman as the EPA Project Coordinator, and John Jaros as the alternate Project Coordinator. EPA has the unreviewable right to change its Project Coordinator. If EPA changes its Project Coordinator or Alternate Project Coordinator, EPA will inform Respondent in writing of the name, address, and telephone number of the new Project Coordinator or alternate Project Coordinator.

3. The Project Coordinators will be responsible for overseeing the implementation of the Work portion of the Order. The EPA Project Coordinator will be EPA's primary designated representative at the Site for this purpose. To the maximum extent possible, all communications, whether written or oral, between Respondent and EPA concerning the Work to be performed pursuant to this Order shall be directed through the Project Coordinators.

#### XV. QUALITY ASSURANCE, SAMPLING, DATA ANALYSIS AND PRIOR NOTICE OF FIELD ACTIVITIES

1. Respondent shall comply with the quality assurance and quality control requirements described in "EPA Requirements for

Quality Assurance Project Plans for Environmental Data Operations," (EPA QA/R-5, August 1994). In addition, Respondent shall plan for the collection of environmental samples and conduct all sample collection and analysis activities required under this Order consistent with "Guidance for the Data Quality Objectives Process," (EPA QA/G-4, September 1994), "Preparation of a U.S. EPA Region 9 Field Sampling Plan for Private and State-Lead Superfund Projects," (9QA-06-03, August, 1993) and "Test Methods for Evaluating Solid Waste," (SW-846, January 1995) and any amendments to these documents. To provide quality assurance and maintain quality control, Respondent shall:

a. Use only laboratories which have a documented Quality Assurance Program which meets the quality assurance and quality control requirements required by EPA.

b. Ensure that the laboratory used by Respondent for analyses performs according to a method or methods deemed satisfactory to EPA. If methods other than those in SW-846 are proposed for use, Respondent shall submit all proposed protocols accompanied by an appropriate justification and a demonstration of the effectiveness and applicability of the proposed alternative to EPA for approval at least thirty (30) days prior to the commencement of analysis and shall obtain EPA approval prior to the use of such protocols.

c. Ensure that EPA personnel and EPA's authorized representatives are allowed access to the laboratory and personnel utilized by Respondent for analyses.

2. Respondent shall notify EPA at least three (3) days before engaging in any field activities pursuant to this Order. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to draw split or duplicate samples of all samples collected by Respondent with regard to this Site or pursuant to this Order. Nothing in this Order shall limit or otherwise affect EPA's authority to draw samples pursuant to applicable law, including, but not limited to, RCRA and the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq.

3. Respondent shall submit to EPA the results of all sampling and/or tests and other data generated by, or on behalf of,

Respondent, in accordance with the requirements of this Order, the Attachments appended hereto and made a part hereof and the documents, including work plans, approved under this Order.

XVI. DELAY IN PERFORMANCE

1. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

2. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's Project Coordinator or alternate Project Coordinator within twenty-four (24) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within two (2) business days after notifying EPA by telephone, EPA shall be provided with written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effects of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XVII. RESERVATION OF RIGHTS, NON-WAIVER, COMPLIANCE WITH LAWS AND ENFORCEMENT

1. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies and defenses, both legal and equitable, including the right to disapprove Work performed by Respondent pursuant to this Order, to perform any portion of the Work required herein and to require that Respondent perform tasks in addition to those required by this Order, including additional site characterization, feasibility studies and/or response or corrective actions pursuant to RCRA, CERCLA or other applicable legal authority. EPA reserves its right to seek



reimbursement from Respondent for such costs incurred by the United States to the full extent allowed by law. This Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory or common law enforcement authority of the United States.

2. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation, the assessment of penalties under Sections 7003 of RCRA, 42 U.S.C. §6973. Nothing in this Order shall limit or preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, or from requiring Respondent in the future to perform additional activities pursuant to any other applicable law or regulation, and/or from taking additional actions as EPA may deem necessary at the Site where the Respondent is engaged in the handling, storage, treatment, transportation or disposal of any solid waste, including the performance of any portion of the Work or tasks in addition to those required by this Order. EPA reserves its right to seek reimbursement from Respondent for such costs incurred by the United States to the full extent allowed by law.

3. All activities by Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable federal, state or local laws and regulations.

4. This Order is not, and shall not be construed as a permit issued pursuant to any federal, state or local statute or regulation. This Order does not relieve Respondent of any obligation to obtain and comply with any federal, state or local permit. Where any portion of the Work requires a federal, state or local permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

5. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under Sections 3007 of RCRA, 42 U.S.C. §§6927 and any other applicable statutes or regulations.

6. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, entity or corporation for any liability such person, firm, partnership, entity or corporation may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, regulated substances, pollutants, or contaminants found at, taken to, or taken from the Site.

7. If a court issues an order that invalidates or stays any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

#### XVIII. OPPORTUNITY TO CONFER

1. Respondent may, within five (5) days after receipt of this Order, request a conference with EPA to discuss this Order.

2. The purpose and scope of the conference shall be limited to issues involving the implementation of the Work and any other response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

3. Requests for a conference must be made by telephone ((415) 744-1317) followed by written confirmation mailed that day to Jeanne Elias, Assistant Regional Counsel, at the address set forth below.

**XIX. NOTICE OF INTENTION TO COMPLY**

1. Respondent shall provide, not later than three (3) days after the Effective Date of this Order, written notice to Jeanne Elias, Assistant Regional Counsel, at the address set forth above, stating whether it will comply with the terms of this Order. If Respondent does not unequivocally commit to perform the Work required by this Order, Respondent shall be deemed to have violated this Order and to have failed or refused to comply with this Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any assertions that Respondent may make in its respective notice.

**XX. PENALTIES FOR NON-COMPLIANCE**

1. Section 7003(b) of RCRA, 42 U.S.C. §6973(b), provides that "[a]ny person who willfully violates, or fails or refuses to comply with, any Order of the Administrator under [RCRA §7003(a)] may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$5,000 for each day in which such violation occurs or such failure to comply continues."

**XXI. NO FINAL AGENCY ACTION**

1. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Director of the Waste Management Division or his successor, or any authorized representative of EPA, shall constitute final agency action giving rise to any rights of judicial review prior to EPA's initiation of a judicial action for violation of this Order, which may include an action for penalties and/or an action to compel Respondent's compliance with the terms and conditions of this Order. In any action brought by EPA to enforce this Order, Respondent shall bear the burden of proving that EPA's

action was arbitrary and capricious or not in accordance with law, or this Order.

XXII. EFFECTIVE DATE AND COMPUTATION OF TIME

1. This Order shall be effective without further notice ten (10) days after the Order is signed by the Director ("Effective Date"). All times for performance of ordered activities shall be calculated from this Effective Date. Notwithstanding the foregoing, the prohibition against actions at the Site, as set forth in Paragraph 2 of the Order shall be effective immediately on receipt of this Order.

XXIII. MODIFICATION AND INTERPRETATION

1. This Order may be amended or modified by EPA. Such amendment shall be in writing and shall have as its effective date that date which is three (3) days after the date the amendment or modification is signed by the Director.

2. The EPA Project Coordinator may agree to changes in the scheduling of Work. Any such changes must be requested in writing by Respondent and be approved in writing by the EPA Project Coordinator.

3. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules and any other writing submitted by Respondent will be construed as an amendment or modification of this Order.

4. The headings in this Order are for convenience of reference only and shall not affect interpretation of this Order.

IT IS SO ORDERED.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
REGION IX

April 10, 1998  
DATE

Julie Anderson-Rubin  
Julie Anderson-Rubin, Director  
Waste Management Division

EPA Contacts:

Tom Dunkelman, Federal On-Scene Coordinator  
U.S. EPA SFD-6  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 744-2294

John Jaros, Investigations & Enforcement  
U.S. EPA SFD-6  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 744-2316

Jeanne Elias, Office of Regional Counsel  
U.S. EPA ORC-3  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 744-1317